



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of:
Austin M. Long *et al.*

Serial No.: 10/077,174

Filed: February 15, 2002

For: PROCESS AND SYSTEM FOR
DETERMINING CORRELATION OF
PUBLIC AND PRIVATE MARKETS AND
RISK OF PRIVATE MARKETS

Group Art Unit: 3693

Examiner: Richard C. Weisberger

Atty. Dkt. No.: ALI515/4-3US/10000

Confirmation No. 9524

CERTIFICATE OF EXPRESS MAILING	
NUMBER:	EV 942 933 317 US
DATE:	February 5, 2007
This paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service on the date indicated above and is addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.	

MAIL STOP PETITION

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Sir:

Applicant provides herewith a request for reconsideration of the Notice of Abandonment dated January 4, 2007. Applicant filed a Pre-Appeal Brief Request for a Panel Review, along with a Notice of Appeal and Request for Extension of Time on December 19, 2005. Applicant did not receive a response to this Request, until the Notice of Abandonment dated January 4, 2007. Enclosed please find a copy of our transmittal and request as filed, along with a copy of the stamped postcard in order to confirm the mailing date of our response.

REMARKS

On 12 July 2005, the *Official Gazette* announced launch of a "Pre-Appeal Brief Conference Pilot Program." (A copy of the Web printout for this announcement is attached as Exhibit A). In accordance with that program, Applicants filed a request for panel review of the final rejection in the pending case (attached hereto as Exhibit B). Further, the *Official Gazette* announcement provided, "If the request is filed with the notice of appeal, the period of time for filing the appeal brief will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request." PAIR reflects that this request was received by the Patent Office on December 27, 2005.

Because no response to the Pre-Appeal Brief Request for a Panel Review (mailed on December 19, 2005) was received, Applicant respectfully submits that the Notice of Abandonment should be withdrawn.

CONCLUSION

Applicant believes that no fees are required with these documents. Should the Commissioner determine that fees are required, the Commissioner is hereby authorized to deduct the requisite fees from Vinson & Elkins L.L.P. Deposit Account No. 22-0365/ALI515/4-3US/10000.

Respectfully submitted,



Tracey B. Davies
Reg. No. 44,644
Attorney for Applicant

Vinson & Elkins L.L.P.
First City Tower
1001 Fannin, Suite 2300
Houston, Texas 77002-6760
512.542.8619

Date: February 5, 2007

United States Patent and Trademark Office OG Notices: 12 July 2005

New Pre-Appeal Brief Conference Pilot Program

Effective Date: Effective upon publication of this notice

This new program offers applicants an avenue to request that a panel of examiners formally review the legal and factual basis of the rejections in their application prior to the filing of an appeal brief. Effective immediately, the USPTO is offering applicants an optional procedure to review the examiner's rejection prior to the actual filing of an appeal brief. The program is intended to spare applicants the added time and expense of preparing an appeal brief if a panel review determines an application is not in condition for appeal. Although this procedure will not be appropriate in every appealed application, in the proper situations it can save both the resources of the applicant and the Office. Applicants continue to have available to them the normal practice and procedures already in effect under Part 41 of the Title 37 of the Code of Federal Regulations relating to appeals and practice before the Board of Patent Appeals and Interferences.

Contents

1. General Provisions
2. Conditions Necessary to Request a Panel Review
3. Content of Request
4. Content of Remarks or Arguments
5. USPTO Consideration of the Request
6. Format of Panel Decision
7. Time Periods Before/After a Panel Decision
8. Administrative Matters

1. General Provisions:

. What is this program?

Under the current practice every applicant whose claims have been twice rejected may appeal the examiner's decision to the Board of Patent Appeals and Interferences. To do so, the applicant first files a notice of appeal accompanied by the appropriate fee i within the appropriate time period ii. Within two months from the date of the filing of the notice of appeal, applicant must file an appeal brief accompanied by the appropriate fee iii. Applicants may buy extensions of time for filing the appeal brief.

This pilot program offers applicants an opportunity to request a review of identified matters on appeal employing an appeal conference currently employed in the Office, but prior to the filing of an appeal brief. The goals of the program are (1) to identify the presence or absence of clearly improper rejections based upon error(s) in facts, or (2) to identify the omission or presence of essential elements required to establish a prima facie rejection.

. Who can use this program?

Any applicant who has filed a notice of appeal and who wants a panel of experienced examiners to perform a detailed review of appealable issues within a set period of time.

. How to decide if you should request this panel review?

Exhibit A
Page 1 of 6

If the applicant feels the rejections of record are clearly not proper and are without basis, then filing this request may result in a panel decision that eliminates the need to file an appeal brief. This should be based upon a clear legal or factual deficiency in the rejections rather than an interpretation of the claims or prior art teachings. The latter is more appropriate for the traditional appeal process currently employed by applicants.

. What happens during a panel review?

A panel of examiners (including the examiner of record) will consider the merits of each ground of rejection for which appeal has been requested and will issue a written decision as to the status of the application.

. When should you file an appeal brief or other correspondence?

This program is designed to allow applicants who think there is a clear deficiency in the prima facie case in support of a rejection to file the request at the same time that they file a notice of appeal. This affords the Office the best opportunity to ensure that applicant will promptly receive a decision on the request. If the request is filed with the notice of appeal, the period of time for filing the appeal brief will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request.

. What actions will terminate the panel's review?

If applicant files any of the following responses after filing a request, but prior to a decision by the appointed panel of examiners assigned to conduct the review, the review process will end and a decision will not be made on the merits of the request:

- an appeal brief
- a request for continued examination (RCE)
- an after-final amendment
- an affidavit or other evidence
- an express abandonment

A request for the declaration of an interference will also result in an end to the review process. Applicant will be promptly notified by an Office communication of termination or of dismissal of the request. If any of the above-noted actions occur, the period for filing the appeal brief (if applicable) will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request.

2. Conditions Necessary to Request a Panel Review:

- Applicant must file a notice of appeal in compliance with 37 CFR 41.31.
- Applicant must file the request with the filing of a notice of appeal and before the filing of an appeal brief. 1

3. Content of Request:

a. File the request and accompanying arguments in a separate paper entitled, "Pre-Appeal Brief Request for Review". A sample request form has been created and is available on the USPTO Internet Website, on the forms page, as PTO/SB/33.

b. In five (5) or less total pages, provide a succinct, concise and focused set of arguments for which the review is being requested.

c. File the request with the notice of appeal.

d. Address the notice of appeal and the request to

- Mail Stop AF
- Commissioner for Patents
- P.O. Box 1450
- Alexandria, VA 22313-1450

- Fax the notice of appeal and the request to the Central FAX Number (now 571 273-8300)

- Hand carry the notice of appeal and the request to the

USPTO Customer Service Window, ATTN: Mail Stop AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314

e. No after-final or proposed amendments may accompany the request. iv

A request that fails to comply with the above noted submission requirements may be dismissed.

4. Content of Remarks or Arguments:

The request should specify-

- . clear errors in the examiner's rejections; or
- . the examiner's omissions of one or more essential elements needed for a prima facie rejection.

For example, the request should concisely point out that a limitation is not met by a reference or the examiner failed to show proper motivation for making a modification in an obviousness rejection (35 U.S.C. 103). Applicants are encouraged to refer to arguments already of record rather than repeating them in the request. This may be done by simply referring to a prior submission by paper number and the relevant portions thereof (e.g., see paper number 3 at pages 4 to 6). However, references such as "see the arguments of record" or "see paper number X" are not helpful and will just obfuscate the real issues for review.

The request may not be more than five (5) pages total and the remarks should be drafted with the expectation that for a clear error in fact or other deficiency, a long detailed explanation is not needed. Requests are limited to appealable, not petitionable matters.

Any actual issues lacking factual basis, including interpretations of the prior art teachings or claim scope as contrasted with clear error in facts, are appropriate for the traditional appeal process and submission of the appeal brief. For grounds where a clear issue on proper interpretation exists, applicant is advised to proceed to appeal with the timely filing of the appeal brief. This program is not intended to be, and is not, an alternative for filing an appeal.

5. USPTO Consideration of the Request:

Exhibit A
Page 3 of 6

Upon receipt of a properly filed request, a Technology Center Art Unit supervisor will designate a panel of examiners experienced in the field of technology to review the applicant's remarks and the examiner's rejections. The panel will include at least a supervisor and the examiner of record. The applicant will not be permitted to attend the review and no interviews will be granted prior to issuance of the panel's decision.

The panel members will review the rejection(s) identified by applicant in the request. They will also review the application and the appropriate evidence in support of the rejections to the extent necessary. The panel will then decide if an issue for appeal is, in fact, present in the record. The Office should mail a decision within 45 days of receipt of a properly filed request.

6. Format of Panel Decision:

After the review is complete, the Office will mail a decision on the status of the application. The decision will state one of the following:

- . Finding 1: The application remains under appeal because there is at least one actual issue for appeal.
- . Finding 2: Prosecution on the merits is reopened and an appropriate Office communication will follow in due course. In appropriate circumstances, a proposed amendment may accompany the panel's decision proposing changes that, if accepted, may result in an indication of allowability for the contested claim(s).
- . Finding 3: The application is allowed on the existing claims and prosecution remains closed.
- . Finding 4: The request fails to comply with the submission requirements and is dismissed.

The decision will summarize the status of the pending claims (still rejected, withdrawn rejections, objected to or allowable claims).

A decision by a pre-appeal brief conference panel to withdraw the rejections of any or all of the claims on appeal is not a decision by a panel of the Board of Patent Appeals and Interferences, and, as such, would not result in any patent term extension of adjustment under 35 U.S.C. Sec. 154(b) (37 CFR 1.701(a)(3) and 1.702(e)).

The decision will not contain any additional grounds of rejection or any restatement of previously made rejections. Such matters will be addressed, as appropriate, in the Examiner's Answer.

7. Time Periods Before/After a Panel Decision:

- . The request must be filed with the filing of a notice of appeal and before the filing of the appeal brief. No extensions of time are available for filing the request for review.
- . The time period for filing an appeal brief will be reset to be one month from mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable. To the extent that any existing USPTO rule is inconsistent with this pilot program, the rule is waived until regulations directed to pre-appeal brief conferences are promulgated, or the pilot program is ended. For example, if a request for a pre-appeal brief conference is filed with a notice of appeal, the time

period set in 37 CFR 41.37(a)(1) is waived so that an appeal will not stand dismissed if an appeal brief is not filed within two months of the filing date of a notice of appeal, but is filed within one month of the decision on the request.

Applicant's period for filing the appeal brief or other appropriate response ends on the mailing date of a panel decision that indicates all claims are allowed or that prosecution is reopened.

8. Administrative Matters:

- . Applicants should ensure that requests are mailed or faxed with the notice of appeal to ensure timely filing. The request should contain a certificate of mailing or transmission under 37 CFR 1.8 and be listed on any postcard receipt (MPEP 503).
- . No supplemental requests or arguments will be accepted.
- . The notice of appeal fee is not refundable, even in the event of a decision favorable to applicant.
- . A request filed after the date of receipt of the notice of appeal will be dismissed as untimely.
- . This procedure does not affect petitions to invoke supervisory authority under 37 CFR 1.181 because such petitions address procedural matters, not appealable matters.
- . Panel decisions will not be petitionable because a decision to maintain a rejection is subject to appeal.
- . A pre-appeal brief conference panel decision that the application remains under appeal is not final agency action for purposes of court review. An applicant dissatisfied with the result of the appeal conference must pursue the appeal before the Board of Patent Appeals and Interferences.
- . This process does not apply to reexamination proceedings.
- . Following a panel review under this pilot program, the examiner retains the option to reopen prosecution or to allow an application after the filing of an appeal brief. This unlikely situation might arise, for example, where new arguments or evidence are presented in the appeal brief.
- . This pilot program will run for at least six months from its effective date. The Office may extend, terminate, revise or otherwise take appropriate action after evaluating its effectiveness at the end of that period. If the program is to be made permanent, the Office will promulgate the appropriate changes to title 37 of the Code of Federal Regulations.

Please direct inquiries with respect to a pending request for a pre-appeal brief conference to the examiner to whom the patent application is assigned, or the examiner's immediate supervisor. Please direct comments and inquiries on this pilot program to Anton Fetting via email addressed to anton.fetting@uspto.gov. You may also contact Mr. Fetting at (571) 272-7701.

June 20, 2005

JOSEPH J. ROLLA
Deputy Commissioner for
Patent Examination Policy

1 Under this pilot program, the request must be filed with the notice of appeal. The Office is considering, as part of a more permanent implementation of the pre-appeal brief conference program, permitting applicants to file the request within two months (non-extendable) of the receipt of the notice of appeal for a fee (\$130.00), in which case the period for filing an appeal brief would simply be the two-month period set

in 37 CFR 41.37(a) (i.e., the mailing of a decision on the request would not provide any new time period for filing the appeal brief). This procedure would be included to encourage applicants to file the request with the notice of appeal and thereby provide the best opportunity for the Office to provide the decision in a timely manner.

- i Set forth in 37 CFR 41.20(b) (1)
- ii See 37 CFR 1.134
- iii Set forth in 37 CFR 41.20(b) (2)
- iv 37 CFR 41.33(a)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Austin M. Long III et al.

Serial No.: 10/077,174

Filed: February 15, 2002

For: PROCESS AND SYSTEM FOR
DETERMINING CORRELATION OF
PUBLIC AND PRIVATE MARKETS AND
RISK OF PRIVATE MARKETS

Group Art Unit: 3624

Examiner: Richard Weisberger

Atty. Dkt. No.: ALI515/4-3

Confirmation No.: 9524

CERTIFICATE OF MAILING

I, certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

December 19, 2005
Date


Timothy S. Corder

PRE-APPEAL BRIEF REQUEST FOR A PANEL REVIEW

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is filed concurrently with a Notice of Appeal in the captioned application.

REASONS FOR REQUESTING REVIEW

The final office action rejects claim 15 as being directed to unpatentable subject matter under 35 U.S.C. §101 for overlapping two statutory classes of invention contrary to *Ex parte* Lyell.

Appellants assert that the rejection is in error because the rejection is not directed to the rejected claim, but rather discusses a claim to a completely different technology than rejected

claim 15, as discussed in the Response to Final Action filed September 16, 2005, pg 8, 1st paragraph. Furthermore, the facts of *Ex parte Lyell* are not relevant to claim 15 as discussed in the 2nd paragraph of page 8 in the same response filed September 16, 2005 because claim 15 is directed to a system comprising electronic means for a series of determinations and not to a tool and method of using the same.

Appellants assert therefore that this is an improper rejection and that the rejection of claim 15 under §101 should be withdrawn.

The final action further rejects claims 2-15 under 35 U.S.C. §112 for failing to comply with the written description requirement.

Appellants assert that the Specification contains more than adequate written description for the claimed subject matter. An explanation is contained in the Response to Final Office Action of September 16, 2005, in the last paragraph of page 9 and the first paragraph of page 10. In the response Appellants point to paragraph [00020] of the specification for specific support of the electronic system, including a system for evaluation of private investments including a central processing unit or CPU (processor), which may be a main-frame computer connected to one or more work stations, or it may be a component of a personal computer that may be a "stand alone" computer or it may be networked to other computers through a common server. The system also includes an input device such as a keyboard in communication with the processor, at least one memory source and software including instructions. The device may also include a display device such as a monitor in communication with the processor.

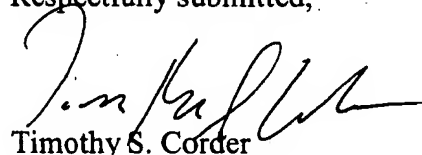
Neither is claim 15 a single means claim, as the electronic means itself encompasses a combination of means, thus distinguishing the claim from *In re Hyatt*.

PATENT

Appellants assert therefore, that the Specification fully meets the Written Description requirement and that all rejections under §112 should be withdrawn.

In light of the foregoing, Appellants respectfully request withdrawal of all rejections and immediate allowance of the existing claims.

Respectfully submitted,



Timothy S. Corder
Registration. No. 38,414
Agent for Applicant

VINSON & ELKINS L.L.P.
First City Tower
1001 Fannin Street
Suite 2300
Houston, Texas 77002-6760
Ph: 512.542.8446

Date: December 19, 2005



ALI 515 4-003 US TSCo

**RECEIVED BY THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Paper: Transmittal Letter (1 sheet); Combined Notice of Appeal and Request for Extension of Time (2 sheets); Pre-Appeal Brief Request (3 sheets); Credit Card Payment Form (1 sheet); Postcard

Inventor: Austin M. Long III, et al.

Serial No.: 10/077,174

Docket No.: ALI515/4-003US/10000

Filed: February 15, 2002

Entitled: PROCESS AND SYSTEM FOR DETERMINING
CORRELATION OF PUBLIC AND PRIVATE MARKETS
AND RISK OF PRIVATE MARKETS

Date Sent: December 19, 2005

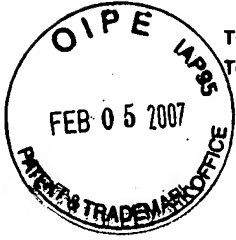


RECEIVED

DEC 30 2005

IP Docket Office
Vinson & Elkins

Vinson&Elkins



Timothy S. Corder tcorder@velaw.com
Tel 512.542.8446 Fax 512.236.3377

December 19, 2005

MAIL STOP AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING

I, certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

December 19, 2005

Date

Timothy S. Corder

Re: U. S. Patent Application Serial No. 10/077,174 entitled "PROCESS AND SYSTEM FOR DETERMINING CORRELATION OF PUBLIC AND PRIVATE MARKETS AND RISK OF PRIVATE MARKETS" by Austin M. Long III, et al. (Our Ref: ALI515/4-003US/10000)

Sir:

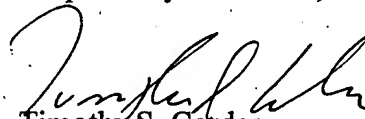
Transmitted herewith for filing with the United States Patent and Trademark Office is:

1. Combined Notice of Appeal and Request for Extension of Time;
2. Pre-Appeal Brief Request for a Panel Review;
3. Credit Card Payment Form; and
4. Return postcard.

Please date stamp and return the enclosed postcard to evidence receipt of these documents.

No additional fee is believed to be due in connection with the filing of these documents. However, should any fee under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason relating to this document, the Commissioner is authorized to appropriately deduct or credit the requisite amount from Vinson & Elkins L.L.P. Deposit Account No. 22-0365/ALI515/4-003US/10000.

Respectfully submitted,


Timothy S. Corder
Reg. No. 38,414

9282:3058
Enclosures

**COMBINED NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES & PETITION FOR
EXTENSION OF TIME UNDER 37 C.F.R. 1.136(a) (Small Entity)**

Docket No.
ALI515/4-003US

In Re Application Of: **Austin M. Long III, et al.**

FEB 05 2007

10/01/1174

Filing Date
February 15, 2002

Examiner
Richard Weisberger

Customer No.
21586

Group Art Unit
3624

Confirmation No.
9524

Invention: **PROCESS AND SYSTEM FOR DETERMINING CORRELATION OF PUBLIC AND PRIVATE
MARKETS AND RISK OF PRIVATE MARKETS**

COMMISSIONER FOR PATENTS:

This is a combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of **June 17, 2005** in the above-identified application.

Date

Applicant(s) hereby appeal(s) to the Board of Patent Appeals and Interferences from the decision of the Primary Examiner dated **June 17, 2005** finally rejecting Claim(s) **2-15**.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☐ One month ☐ Two months ☒ Three months ☐ Four months ☐ Five months

from: **September 17, 2005**

Date

until: **December 17, 2005**

Date

The fee for the Notice of Appeal and Extension of Time has been calculated as shown below:

Fee for Notice of Appeal: **\$250.00**

Fee for Extension of Time: **\$510.00**

TOTAL FEE FOR NOTICE OF APPEAL AND EXTENSION OF TIME: **\$760.00**

The fee for the Notice of Appeal and extension of time is to be paid as follows:

☐ A check in the amount of _____ for the Notice of Appeal and extension of time is enclosed.

☐ Please charge Deposit Account No. _____ in the amount of _____

☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. **22-0365**.

☐ Any additional filing fees required under 37 C.F.R. 1.16.

☐ Any patent application processing fees under 37 CFR 1.17.

☐ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No.

☒ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**COMBINED NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES & PETITION FOR
EXTENSION OF TIME UNDER 37 C.F.R. 1.136(a) (Small Entity)**

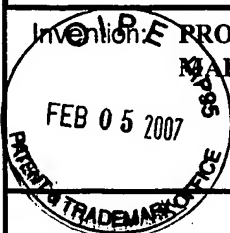
Docket No.
ALI515/4-003US

In Re Application Of:

Austin M. Long III, et al.

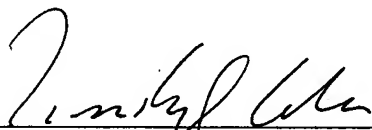
Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/077,174	February 15, 2002	Richard Weisberger	21586	3624	9524

**INVENTION: PROCESS AND SYSTEM FOR DETERMINING CORRELATION OF PUBLIC AND PRIVATE
MARKETS AND RISK OF PRIVATE MARKETS**



TO THE COMMISSIONER FOR PATENTS:

This combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:



Signature

Dated: December 19, 2005

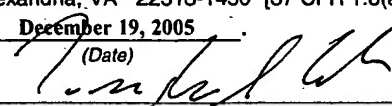
Timothy S. Corder
Reg. No. 38,414
Vinson & Elkins L.L.P.
First City Tower
1001 Fannin Street, Suite 2300
Houston, TX 77002-6760

Certificate of Transmission by Facsimile*

I certify that this document and authorization to charge deposit account is being facsimile transmitted to the United States Patent and Trademark Office	
(Fax no. _____)) on _____
(Date) _____	
Signature _____	
Typed or Printed Name of Person Signing Certificate _____	

***This certificate may only be used if paying by deposit account.**

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on	
December 19, 2005	_____
(Date)	
Signature of Person Mailing Correspondence _____	
Timothy S. Corder	
Typed or Printed Name of Person Mailing Correspondence _____	

cc: Marya Breig, Docket Coordinator



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Austin M. Long III et al.

Serial No.: 10/077,174

Filed: February 15, 2002

For: PROCESS AND SYSTEM FOR
DETERMINING CORRELATION OF
PUBLIC AND PRIVATE MARKETS AND
RISK OF PRIVATE MARKETS

Group Art Unit: 3624

Examiner: Richard Weisberger

Atty. Dkt. No.: ALI515/4-3

Confirmation No.: 9524

CERTIFICATE OF MAILING

I, certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

December 19, 2005
Date


Timothy S. Corder

PRE-APPEAL BRIEF REQUEST FOR A PANEL REVIEW

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is filed concurrently with a Notice of Appeal in the captioned application.

REASONS FOR REQUESTING REVIEW

The final office action rejects claim 15 as being directed to unpatentable subject matter under 35 U.S.C. §101 for overlapping two statutory classes of invention contrary to *Ex parte* Lyell.

Appellants assert that the rejection is in error because the rejection is not directed to the rejected claim, but rather discusses a claim to a completely different technology than rejected

PATENT

claim 15, as discussed in the Response to Final Action filed September 16, 2005, pg 8, 1st paragraph. Furthermore, the facts of *Ex parte Lyell* are not relevant to claim 15 as discussed in the 2nd paragraph of page 8 in the same response filed September 16, 2005 because claim 15 is directed to a system comprising electronic means for a series of determinations and not to a tool and method of using the same.

Appellants assert therefore that this is an improper rejection and that the rejection of claim 15 under §101 should be withdrawn.

The final action further rejects claims 2-15 under 35 U.S.C. §112 for failing to comply with the written description requirement.

Appellants assert that the Specification contains more than adequate written description for the claimed subject matter. An explanation is contained in the Response to Final Office Action of September 16, 2005, in the last paragraph of page 9 and the first paragraph of page 10. In the response Appellants point to paragraph [00020] of the specification for specific support of the electronic system, including a system for evaluation of private investments including a central processing unit or CPU (processor), which may be a main-frame computer connected to one or more work stations, or it may be a component of a personal computer that may be a "stand alone" computer or it may be networked to other computers through a common server. The system also includes an input device such as a keyboard in communication with the processor, at least one memory source and software including instructions. The device may also include a display device such as a monitor in communication with the processor.

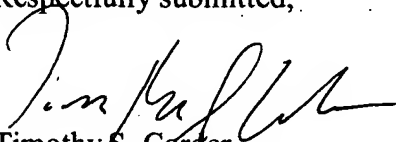
Neither is claim 15 a single means claim, as the electronic means itself encompasses a combination of means, thus distinguishing the claim from *In re Hyatt*.

PATENT

Appellants assert therefore, that the Specification fully meets the Written Description requirement and that all rejections under §112 should be withdrawn.

In light of the foregoing, Appellants respectfully request withdrawal of all rejections and immediate allowance of the existing claims.

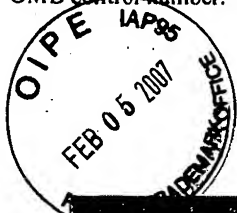
Respectfully submitted,



Timothy S. Corder
Registration. No. 38,414
Agent for Applicant

VINSON & ELKINS L.L.P.
First City Tower
1001 Fannin Street
Suite 2300
Houston, Texas 77002-6760
Ph: 512.542.8446

Date: December 19, 2005



United States Patent and Trademark Office

Credit Card Payment Form

Please Read Instructions before Completing this Form

Credit Card Information

Credit Card Type: ☐ Visa ☐ MasterCard ☒ American Express ☐ Discover

Credit Card Account #: ~~XXXXXXXXXXXX~~

Credit Card Expiration Date: 09/06

Name as it Appears on Credit Card: Tim Corder

Payment Amount: \$(US Dollars): 760.00

Cardholder Signature: *Tim Corder*

Date: December 19, 2005

Refund Policy: The Office may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The Office will not refund amounts of \$25.00 dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts (37CFR § 1.26). Refund of a fee paid by credit card will be issued as a credit to the credit card account to which the fee was charged.
Service Charge: There is a \$50.00 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR § 1.21 (m)).

Credit Card Billing Address

Street Address 1: Vinson & Elkins L.L.P.

Street Address 2: 2801 Via Fortuna, Suite 100

City: Austin

State/Province: TX

Zip/Postal Code: 78746

Country: US

Daytime phone #: 512/542-8446

Fax #: 512/236-3377

Request and Payment Information

Description of Request and Payment Information:

Payment of Fee for Pre-Appeal Brief Request

<input checked="" type="checkbox"/> Patent Fee	<input type="checkbox"/> Patent Maintenance Fee	<input type="checkbox"/> Trademark Fee	<input type="checkbox"/> Other Fee
Application No. 10/077,174	Application No.	Application No.	IDON Customer No.
Patent No.	Patent No.	Registration No.	
Attorney Docket No. ALI515/4-003US		Identify or Describe Mark	

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the United States Patent & Trademark Office will not be liable in the event that the credit card number becomes public knowledge.



UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

JAN 08 2007

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

ALIS15 4-365

IP Docket Office

TSC

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/077,174

02/15/2002

Austin M. Long III

ALIS15/4-3

9524

21586

7590

01/04/2007

VINSON & ELKINS, L.L.P.
1001 FANNIN STREET
2300 FIRST CITY TOWER
HOUSTON, TX 77002-6760



EXAMINER

WEISBERGER, RICHARD C

ART UNIT

PAPER NUMBER

3693

MAIL DATE

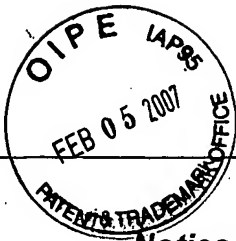
DELIVERY MODE

01/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

COPY



Notice of Abandonment

Application No.	Applicant(s)	
10/077,174	LONG ET AL.	
Examiner	Art Unit	
Richard C. Weisberger	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85):
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

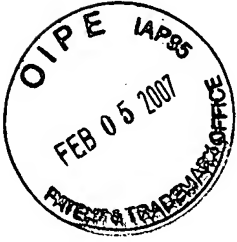
Appeal not filed.

Richard C Weisberger
Primary Examiner
Art Unit: 3693

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

02-07-07 IFW

Vinson & Elkins



Tracey B. Davies tdavies@velaw.com
Tel 512.542.8619 Fax 512.236.3215

February 5, 2007

MAIL STOP PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF EXPRESS MAILING

NUMBER: EV 942 933 317 US

DATE: February 5, 2007

This paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service on the date indicated above and is addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Re: U. S. Patent Application Serial No. 10/077,174 entitled "PROCESS AND SYSTEM FOR DETERMINING CORRELATION OF PUBLIC AND PRIVATE MARKETS AND RISK OF PRIVATE MARKETS" by Austin M. Long, *et al.* (Our Ref: ALI515/4-3US/10000)
Confirmation No. 9524


Dear Sirs:

Enclosed please find the following documents for filing with the above-referenced patent application:

- 1) Petition to Withdraw the Holding of Abandonment;
- 2) Copy of the following filed on December 19, 2005: Combined Notice of Appeal and Request for Extension of Time; Copy of Pre-Appeal Brief Request for a Panel Review; Copy of USPTO stamped postcard, dated December 27, 2005; and
- 3) Copy of Notice of Abandonment dated January 4, 2007.

It is believed that no fees are due at this time. Should any additional fees under 37 C.F.R. §§ 1.16 to 1.18 be required for any reason relating to the enclosed document, the Commissioner is hereby authorized to deduct the requisite amount from VINSON & ELKINS L.L.P. Deposit Account No. 22-0365/AND515/4-3US/10000.

Respectfully submitted,


Tracey B. Davies
Reg. No. 44,644

TBD/eh
Enclosures

cc: Marya Breig, Docket Coordinator (w/o encls.)
Austin 796715v1

Vinson & Elkins LLP Attorneys at Law
Austin Beijing Dallas Dubai Hong Kong Houston
London Moscow New York Shanghai Tokyo Washington

2801 Via Fortuna, Suite 100
Austin, TX 78746-7568
Tel 512.542.8400 Fax 512.542.8612 www.velaw.com